90-1113

FILED
DEC 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY ANDERSON,

Petitioner,

vs

CHRYSLER MOTORS CORPORATION,
STOCKTON DODGE, INCORPORATED,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252

QUESTIONS PRESENTED FOR REVIEW

A. What right did the district court have to use Local Court Rule 230 to deny petitioner his civil rights to the benefits & protection of the Federal Rules of Civil Procedure?

B. Did that deprivation subject petitioner to unjustifiable discrimination and is it violative of petitioner's rights to Due Process of Law?

C. What right does the appellate court have to approve the judicial misconduct of the district court?

D. When defense lawyers accept & advocate judicial misconduct of the judge, are the lawyers liable for fraud & conspiracy?

E. Are the principals liable for their lawyers fraud and conspiracy?

F. What privilege does the district court judge have to misrepresent claims of the petitioner in the judges Order NR 26?

G. Has the petitioner ever surrendered his civil rights to Trial by Jury?

H. When did Congress grant permission to the 9th Circuit Court of Appeals to create legislation on prior restraint in Local Rule 21, of the Court of Appeals?

I. When did Congress grant the 9th Circuit Court of Appeals, permission to alter amend & misrepresent provisions of statute 28 USC 372(c) in the court's local rule Appendix "B"?

J. What is the amount limited by the terms of the sales contract for fraud perpetrated by the sellers on the buyer?

K. What are the standards of meaning & application for the ambiguous term not appropriate?

L. Where are those standards set out?

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Petitioner HENRY ANDERSON, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this case on August 21, 1990.

REFERENCES TO OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit is an unpublished written Opinion of the Ninth Circuit and appears in Appendix A to this petion at page A-1. The Order of the Ninth Circuit Court of Appeals denying a request for rehearing appears in Appendix B to this petition at page B-1. The Opinion of the United States District Court for the Eastern District of California appears in Appendix C at page C-1.

STATEMENT OF JURISDICTIONAL GROUNDS

The Court of Appeals Opinion was filed on August 21, 1990. The Court of Appeals Order denying a petition for rehearing was filed October 1, 1990.

A timely Notice of Appeal was received by the court clerk on October 23, 1990.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTION AND STATUTORY PROVISIONS

The Constitution of the United States

Article I, Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States.

Article III. Section 1. The judicial Power of the United States, shall be vested in one supreme court.

Article VI, (2) This Constitution, and the Laws of the United States which shall be made in pursuance thereof,. . . under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, . . .

Amendment I. Congress shall make no law. . .abridging the freedom of speech, or of the press; . . .

Amendment V. No person shall . . . .be deprived of life, liberty, or property without due process of law; . . .

Amendment VII. In suits at commom law . . . the right of trial by jury shall be preserved. . .

Amendment IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the People.

STATEMENT OF THE CASE

This case is an action upon a contract in which the defendants used fraud, deceit and misrepresentation to entice petitioner into entering into the contract.

The amount in controversy is greater than $10,000.00, exclusive of costs and interest.

The case also includes judicial misconduct by the courts. Defendants & courts are estopped from denying their actions & omissions.

Petitioner believed in the words & conduct of Stockton Dodge's employees and the claims made by them.

Petitioner had the right to believe in the claims and conduct.

During the sales negotiations Stockton Dodge furnished petitioner a copy of Chrysler Motors advertising, which made specific claims of quality, durability and strength. Those claims were made by Chrys-

ler Motors Corporation, and are statements of material facts for the product.

START WITH DODGE'S 5/50 LIMITED WARRANTY.

Warranty protection is the first question you should ask about any truck you are considering. We have so much confidence in the quality of the trucks we build that we back them with the same warranty we give the cars we build ...with our standard five-year or 50,000-mile Limited Warranty. We think it sums up our attitude about the quality, durability and strength built into each and every domestically built Dodge pickup.

On the next page are parts of Stockton Dodges' invoice number 4942 for repair and replacement of the clutch on the truck.

The upper invoice part, shows the truck I.D. number, the trucks mileage and the repair order date, 10-12-87.

Note the very small illegible printing in the area, titled "Dealer Disclaimer of warranties". That invoice no. 4942 was the first statement of that practice & policy of Stockton Dodge, made known to buyer.

Stockton Dodge never informed buyer of that practice and policy during the sales negotiations or during the signing of the contract.

R.O. DATE	MILEAGE	TIME REC'D	TIME PROMISED	DEALER
10/12/8	[illegible] - 3047	7:10	10/12 17:00	52

BUSINESS PHONE #	DEALER DISCLAIMER OF WARRANTIES
-0000 [illegible]	Any warranties on the products sold hereby are those of the manufacturer. As between this retail seller and buyer, the product is to be sold "AS IS" and the entire risk as to the quality and performance of the product is with the buyer. The seller expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. This disclaimer by this seller in no way affects the terms of the manufacturer's warranty. The buyer acknowledges being so informed prior to the sale.

DEL. DATE	DEL. MILEAGE
4/29/87	[illegible]

VEHICLE I.D. NO.
1G7FD04H4HS463371

PURCHASE ORDER OR AUTHORIZATION NO.	LAST R.O. #	LAST R.O. DATE

The following item a copy of that same dealer disclaimer is enlarged to make the disclaimer legible. The original printing is illegible & enlarging it does not make the printing better.

DEALER DISCLAIMER OF WARRANTIES

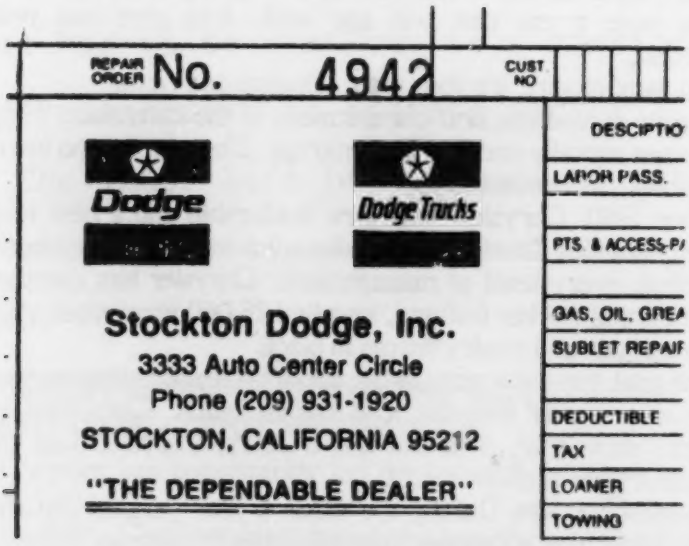
Any warranties on the products sold hereby are those of the manufacturer. As between this retail seller and buyer, the product is to be sold "AS IS" and the entire risk as to the quality and performance of the product is with the buyer. The seller expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. This disclaimer by this seller in no way affects the terms of the manufacturer's warranty. The buyer acknowledges being so informed prior to the sale.

LAST R.O. #	LAST R.O. DATE

That printing is illegal and void.

BEST AVAILAB

This page is a copy of the name of defendant Stockton Dodge on invoice no. 4942 and below that name, in capital letters is the false statement, "THE DEPENDABLE DEALER", which is underlined twice in order to draw attention to the slogan & impress the public and the customers.


REPAIR ORDER No. 4942

CUST NO

DESCIPTIO

LABOR PASS.

PTS. & ACCESS-P/

GAS. OIL. GREA

SUBLET REPAIF

DEDUCTIBLE

TAX

LOANER

TOWING

Dodge

Dodge Trucks

Stockton Dodge, Inc.
3333 Auto Center Circle
Phone (209) 931-1920
STOCKTON, CALIFORNIA 95212
"THE DEPENDABLE DEALER"

That claim THE DEPENDABLE DEALER contradicts the dealer disclaimer of warranties on the preceding page. Contradictory statements cannot all be true.

The practice and policy of Stockton Dodge is a policy of hypocritical deception common to double dealing firms.

LE COPY

The president of Chrysler Motors made a public statement titled, "The Car Buyer's Bill of Rights. Parts of those statements are included here in this petition.

1. EVERY AMERICAN HAS THE RIGHT TO A QUALITY CAR

You want a car that will start every morning.

You want a car that will age well. And give you years of satisfaction.

You want quality. It's your right. Undisputed right.

Quality is also the first commitment of the carmaker. Without it he becomes morally and fiscally bankrupt. Chrysler has no intentions of forsaking this commitment.

Since 1980, Chrysler–with new leadership and a new resolve–initiated **Five Key Quality Programs** involving every member of the work force, every level of management. Chrysler has completed 5 million hours of worker training, enrolled 26,000 employees in quality schools and put 583 quality teams in place.

The goal: top the quality of the imports. It's an ambitious goal, but results are already showing it is within reach. Corporate quality indicators show that, over the last 8 years, Chrysler-built car and truck quality has improved 43%.

Lowest recalls. During the same 8-year period, Government records show that Chrysler has the lowest average safety recall record of any American car company for passenger cars registered for the '80 through '87 model years.

And over the last 5 years, lower than such prominent imports as BMW, Porsche and Volvo.

The foregoing Right #1, addresses the Rights of the public, & petitioner and it is part of the practice & policy of Chrysler Motors as stated by the president of the corporation, & was ignored by Stockton Lodge, Incorporated.

Right #2, shown below was denied petitioner by defendants in this civil case.

The truck was defctive when it was sold to petitioner, that defect caused the clutch to malfunction & Stockton Dodge had to remove & replace the clutch in the vehicle. When the clutch was removed the fly wheel had to be sent out to a machine shop to be remachined to operate properly.

The lower left hand corner of invoice 4942, gives proof of that machining operaon the flywheel.

2. EVERY AMERICAN HAS THE RIGHT TO LONG-TERM PROTECTION

Chrysler has consistently led the industry in long-term quality protection.

In 1980, Chrysler introduced the innovative 5/50 Protection Plan. In 1987, Chrysler extended this coverage substantially on the most important part of your car, the engine and powertrain, to 7 years or 70,000 miles. It's the **longest powertrain protection** in the industry. And you also get 7-year or 100,000-mile protection against outer body rust-through.* The plan covers every car, truck and minivan Chrysler builds in North America, and now it includes '89 Jeep vehicles. 7/70, unprecedented when introduced... unsurpassed today.

Petitioner was deprived of that right to long term protection, because the new truck truck was defective when sold to him.

Petitioner was deprived of his right # 3 to honest service & competent repairs by the dishonest, incompetent dealer.

The defective clutch removed & replaced by Stockton, was an incompetent repair job. The incompetent repairs caused the replacement clutch to malfunction and the vehicle had to be towed to a local repair shop to remove the faulty repairs made by Stockton Dodge's repair shop.

3. EVERY AMERICAN HAS THE RIGHT TO FRIENDLY TREATMENT, HONEST SERVICE AND COMPETENT REPAIRS

Dealer service is the key link–the most fragile link–between the car buyer and the carmaker. It can make or break a relationship.

Chrysler understands this, better than most. And (under the direction of Lee Iacocca) has taken specific action to strengthen and revitalize this relationship. Results are gratifying.

Highest satisfaction. Chrysler owners have the highest level of satisfaction of any buyers of American cars. Higher than GM owners. And significantly higher than Ford owners.**

As Lee Iacocca says, "The next great leap forward in the car industry isn't going to happen in Detroit. It's going to happen at the dealership." One telling example: In 1981, our dealer technicians received 184,000 hours of training. Last year, 542,184 hours. That's an increase of almost 200%. And the result of a joint effort by Chrysler Management and the tremendous and willing commitment of over 4,000 Chrysler Motors' dealers.

Stockton Dodge cheated the buyer out of his rights to honest service and competent repairs.

The bad faith disclaimer of warranties on invoice no. 4942, page 6 herein is an example of the fraudulent hypocrisy of the seller Stockton Dodge and it breached the contractual duties of good faith & satisfaction inherent in every contract for purchase of personal property, see below #6.

6. THE RIGHT TO SATISFACTION

Chrysler believes there's no secret to satisfying customers. Build them a quality product. A safe product. Protect it right—with the longest powertrain warranty in the business. Service it right. And treat them with respect. It's that simple.

And Chrysler is doing exactly that. The proof is coming from you, the customer.

J.D. Power and Associates, one of the most respected research organizations in the industry, surveyed over 25,000 owners of 1987 passenger cars for product quality and dealer service. The results: Chrysler Motors has the **highest customer satisfaction** of any American car company—**two years running**—for overall product quality and dealer service.**

Chrysler believes it's our job to satisfy your needs. We have the obligations... you have the rights.

"QUALITY IS YOUR RIGHT. AND WE INTEND TO SEE THAT YOU GET IT."

Lee Iacocca

CHRYSLER MOTORS

CHRYSLER · PLYMOUTH · DODGE
DODGE TRUCKS · JEEP · EAGLE

The district court knew that in order to plead fraud, the names of the persons making false statements should be pleaded.

The sales agent for Stockton Dodge was Jerry -----. Jerry "WHO". Why has Stockton Dodge refused to answer that question?

A copy of the signature of the person who signed the sales contract for Stockton Dodge is shown below.

Address _____

Zip Phone

Address 3333 AUTO CENTER CIRCLE STOCKTON, CA 9

By _____ Title _____

Is that a legible signature? What is that persons name and title? Why has Stockton Dodge evaded answering the questions?

Judge Coyle as a former corporate lawyer knows that those casual(??) omissions are part of the practice & policy of shyster corporations; used to deny and delay efforts by the corporations customers to establish facts in any subsequent controversies over contract representations and similar matters.

That is one of the reasons why the district court used its illegal local rule 230 to deny Anderson's motion as untimely.

Defendant Chrysler Motors lawyer John Fairbrook, state bar # 105115, made the false claim that Anderson was not prejudiced by the district court's use of its inconsistent local rule 230 to deprive the petitioner of his civil rights to the protection & benefits of the F.R.C.P.

Stockton Dodge has also made the false claim there is another case pending. There is no other case pending between the parties.

Petitioner has impaired hearing & the district court denied petitioner his rights to the benefits & protection of statute 28 USC Section 1827. The court makes a false claim of oral argument in the courts proceedings. The courts minutes give proof of no oral arguments, at any time between the petitioner and the court.

Judicial Misconduct of the District Court

FEDERAL RULES OF CIVIL PROCEDURE

Rule 1. Scope of Rules.
These rules govern the procedure in the United States district court in all suits of a civil nature. . . They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 83. Rules by District Courts.
Each district court by action of a majority of the judges thereof may from time to time, . . .make and amend rules governing its practice not inconsistent with these rules.

Here is an exact copy of local rule 230.

The language of that local rule brazenly states that rule 230 is not subject to the provisions of the FRCP.

RULE 230

(f) Calculation of Time Periods. The time periods fixed by this Rule shall not be subject to the provisions of FRCivP 6(e), allowing for additional time after service by mail, nor shall the time periods for service of notices of motions, affidavits, and other documents provided by FRCivP 6(d) be applicable. See LR 136.

Misconduct in office. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

> This lack of a democratic system involving the bar & law schools is a particular defect of local rule making. There often is no public notice, no public hearings, and no way to oppose adoption there is no real opportunity even to challenge the rules in litigation since the judges who will decide the case are often the ones who adopted the rules. Judge Jack B. Weinstein, of the Eastern District of New York, 1977, 63 A.B.A.J. 47.

However when the local rules state that the Federal Rules of Civil Procedure do not apply in a particular court district, it is obvious that the court has a distinct contempt for the law the court is abrogating & more contempt for the public the court is defrauding and last but not least the judge has distinct contempt for the United States Constitution.

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impugnity. All creatures of the government from the highest to the lowest are creatures of the law & bound to obey it. U.S. v LEE, 106 U.S. 220.

These remarks apply particularily to District Judge Robert E. Coyle.

The district court in its docket entry #27, "Decision & Order re Motion for production of Certified Copies, page 2 thereof, line 18, states:

"The court finds that the plaintiff's motion is untimely made. Plaintiff filed this motion on May 24, 1989, only 2 weeks before the June 5 1989 hearing date while plaintiff cites to Rules 6 & 7 of the Federal rules of Civil Procedure for the proposition that only five days prior to the hearing are required, Local Rule 230 provides that motions shall be set for hearing "not less than 28 days after service and filing of the motion. . ." there fore this motion is not properly noticed & will not be entertained at this time,
(end of page 2.)

That inconsistent local rule 230 was used by the court to deprive Anderson of his civil rights to Due Process of Law and Equal protection of the Laws.

REASONS FOR GRANTING THE WRIT

A. This Case Presents an Important Issue Relating to the Power of the District Court to Make Local Rules that Nullify the Federal Rules of Civil Procedure.

Rule 83 of the FRCP gives lower courts authority to make local rules that are not inconsistent with the FRCP, BUT Rule 83, does not give any procedure to use, to set aside the inconsistent local rules.

> This power hedged with limitations has been the imprimatur for a plethora of individualized rules which have generally remained unchallenged & untested by subjection to the comprehensive scrutiny of scholarly inquiry. Indeed one legal scholar has characterized the fruits of the power as the "soft underbelly " of federal procedure.
>
> The Local Rules of Civil Procedure in the Federal District Courts--A Survey, 1966, Duke L.J. 1011 , 1012.

Writing on the power to make local rules another commentator has this candid comment made.

> The federal courts of this country are becoming a kind of procedural Tower of Bable because of the differences in local rules. Professor Maurice Rosenberg 67 Col. L. Rev. 1251.

> Although they (local rules) are likely to be known to local practitioners, they may become a "series of traps" for lawyers from other districts who are not aware of them." Woodham v. American Cystoscope Co. of Pelham N.Y. C.A. 5th 335 F.2d 551

In this case petitioner is the victim.

> Due process of law, a course of legal proceedings according to those rules & principles which have been established in our systems of jurisprudence for enforcement of private rights. Pennoyer v Neff. 95 U.S. 733.

> Full hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party & to meet them. Morgan v U.S. 304 U.S. 1

Defense lawyers conspired with judge Coyle when they adopted & cited the court's inconsistent local rule # 230.

> That private parties who "corruptly conspire with judge in connection with such conduct" are acting under color of law regardless of the immunity of the judge". Dennis v Sparks, 449 U.S. 24.

> Rights in property are basic civil rights. Lynch v Household Finance Corp. 92 S. Ct. 1113

Chrysler Motors designed, manufactured and assembled the product, and the defects,

B. Defendant Chrysler Motors Corp., made a Public Statement Titled, Car Buyer's Bill of Rights, signed by the president of Chrysler Motors Corporation.

The intent of that so called, Car Buyer's Bill of Rights was to influence people including petitioner to purchase Chryslers cars and trucks.

Page 8, herein, contains a copy of the first Right of that Bill of Rights, quote:

#1. Every American has the right to a quality Car.

That Bill of Rights contains these provisions: You want a car that will age well. And give you years of satisfaction.

Invoice # 4942, shows 3049 miles on the speedometer when defendant Stockton Dodge removed & replaced the defective clutch assembly installed by Chrysler Motors in the truck. The truck was only an infant at the time. Age well???

Page 9 contains a copy of Right #2 and Chrysler stresses long-term quality protection for the power train of the truck.

That # 2 Right states "the protection covers 1987 trucks & 70,000 miles of use. That is outright fraud, dec it, misrepresentation, intended & used to entice the public, including petitioner to buy cars & trucks made by Chrysler Motors Corp.

Right #3 on page 10 states Every American Has the Right to Friendly Treatment, Honest Service and Competent Repairs; that is a nice sounding theory, but in actual practice in this case, it is fraudulent.

How can the double talking Stockton Dodge give honest service, when its practice & policy makes inconsistent claims?

Also how can Stockton Dodge be honest in its repair work, when Stockton Dodge refuses to guarantee its ordinary repair work & makes a disclaimer in minute printing which is contrary to law & honesty?

See page 6 for proof of those inconsis-

Page 11 states the final Right #6 of the Car Buyer's Bill of Rights, which is listed as "The Right to Satisfaction."

Each & every one of those Car Buyer's Rights, made by Chrysler Motors were representations of material facts, designed to entice the petitioner to purchase the vehicle manufactured by Chrysler Motors.

> That a seller misrepresenting a material fact, upon which the buyer relied in purchasing the product, would be strictly liable for the failure of the product to conform with the representation. Baxter v Ford Motor Co. 160 Wash. 402, 12 P.2d 412.

Similarily Stockton Dodge's failure to disclose the material facts of its repair facility to the buyer, constituted fraudulent misrepresentation to the buyer.

> Knowing silence or failure to disclose to the buyer a material fact or condition may constitute fraud or deceit. Lindberg Cadillac Co. v Aron. 371 S.W.2d 651.

Stockton Dodges inconsistent claims in its invoice # 4942, provide the proof, for its fraud, deceit, misrepresentations.

C. The Court of Appeals has rendered an Opinion in Conflict with Opinions of Another Court of Appeals, which calls for an Exercise of the Supreme Court's Power of Supervision.

> Statements made in advertising have been held to create express warranties and advertisers have been held liable when their products did not measure up to special claims of quality, suitability for use or safety.
> Gardner v General Motors Corp. 507 F. 2d 525 (10th Cir.)

Petitioner-Appellant specifically mentioned Chrysler Motors Corporation's Bill of Rights for Car Buyers, in appellant's Briefs ir the Court of Appeals. The Court of Appeals ignored those claims & exhibits of the advertising shown by appellant.

Defendant Chrysler Motors is estopped by Federal Rules of Evidence Rule # 801.26 from denying their statements & conduct.

Defendant Stockton Dodge, Inc. also is estopped from denying their advertising & concealment of their bad faith disclaimer of warranties & inconsistent claims. That disclaimer is practice & policy of fraud.

D. The Ninth Circuit Court of Appeals has Usurped the Legislative Powers of Congress in Such a Manner as to Call for an Exercise of the Supreme Court's Power of Supervision.

United States Constitution, Article I Section 1, All legislative Powers herein granted shall be vested in a Congress of the United States.

The Constitution does not grant power to other government entities to modify or alter or misrepresent any legislation enacted by Congress; or to intrude upon the legislative powers of Congress.

§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

Petitioner has cited the judicial misconduct of the judge for the Eastern Dis-

trict court on page 12 herein, for using the inconsistent local rule 230 to deprive petitioner of his civil rights.

28 USC 372(c)(1) makes a very plain method for filing complaints for judicial misconduct. That paragraph is open & above board, without any hints for concealment.

> The operation of the courts & the judicial conduct of judges are matters of utmost public concern, and that injury to the reputation of judges or of judicial institutions is an insufficient basis for state suppression of free expression. Landmark Communications Inc. v Virginia. The opinion was by Burger Ch.J. joined by White, Marshall, Blackmun, Rehnquist and Stevens, J.J.

Notwithstanding that opinion the Ninth Circuit Court of Appeals has fabricated a series of local rules that are inconsistent with that decision, & the local rules show a conspiracy by a majority of judges to abrogate Constitutional Amendment I, & permit the local court rules to abridge the First Amendment and conceal, cover-up judicial misconduct of the judges.

A majority of judges of the Ninth Circuit Court of Appeals has fabricated & endorsed a 42 page series of local rules, governing filing of complaints for judicial misconduct.

The preparation of those local rules has usurped legislative powers of Congress and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision.

> The cited cases are premised on the underlying theory that a public official acts as "trustee for the citizens & the state". . ."and thus owes the normal fiduciary duties of a trustee e.g. honesty & loyalty to the citizens & the state. The logic continues that as the cestui, the public is entitled to the faithful and disinterested services of government servants & employees, & a public official may not deprive the public of its rights." U.S. v Mandel 591 F.2d 1363

Those local rules by the Ninth Circuit Court of Appeals are inconsistent with the provisions of 28 USC 2071(a) & 2072(b) and abrogate the First Amendment's words.

CONCLUSION

Petitioner had no knowledge of the local rules of the district court.

Petitioner had no knowledge of the district court's inconsistent local rule 230.

The district court had no duty to fabricate its inconsistent L.R. 230.

The district court had no duty to use L.R. 230 to deprive petitioner of the protection and benefits of the F.R.C.P.

The use by the district court of its inconsistent L.R. 230 subjected petitioner to unjustifiable discrimination.

The appeals panel of the court of appeals had no duty to ignore the use of the inconsistent L.R. by the district court.

Wright, et al state in their discourse on local rules, judges use local rules to cheat people out of their civil rights.

The court of appeals had no duty to misrepresent its concept of judicial mis-

conduct as the LAW on judicial misconduct.

The Ninth Circuit Court of Appeals had no duty to usurp the legislative powers of Congress & fabricate its inconsistent local rules governing complaints for judicial misconduct.

Petitioner has no duty to use the inconsistent local rules & forms of the appeals court governing complaints of judicial misconduct. (42 page brochure).

The Ninth Circuit Court of Appeals had no duty to rape the Constitution with its local rule 21.

Petitioner had no knowledge of the inconsistent claims of defendant Stockton Dodge Inc, until invoice 4942 was used to cover the incompetent repairs made by the defendant on the product.

Defendants use of the illegal L.R. 230 shows conspiracy between defendants & court.

Chrysler Motors "Car Buyers Bill of Rights is"inconsistent with its actions in

this controversy for fraud, misrepresentation and breach of contract.

See Car Buyers Right #1, page 8, and compare Right #2, page 9 with the following facts; the defective vehicle has less than 10,000 miles on the odometer and has 3 clutches installed, for an average of 3,330 miles per clutch, 3,330 miles does not began to compare with Chrysler's claim of 70,000 miles.

This Supreme Court should exercise its powers of supervision & instruct the court of Appeals to refrain from usurping legislative Powers of Congress; and the controversy should be returned to the lower ct. for action protecting the petitioner's legal & civil rights.

Dated 12/12/1990.

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON,	No. 89-16017
Plaintiff-Appellant,	DC# CV-89-0075 REC
v.	
CHRYSLER MOTORS CORPORATION, STOCKTON DODGE, INCORPORATED,	MEMORANDUM *
	FILED 8-21-90
Defendants-Appellees.	

Appeal from the United States District Court for the Eastern District of California.

Robert E. Coyle, District Judge, Presiding.

Submitted July 19, 1990 **
San Francisco, California

Before: TANG and NOONAN, Circuit Judges, and WATERS***, District Judge:

We affirm the district court's decisions. We conclude (1) the district court did not err in dismissing Anderson's claim for lack of subject matter jurisdiction.

(2) Anderson was not entitled to an interpreter under U.S.C. Sec. 1827(d)(1).

and (3) the district court did not err in denying Anderson's motion to produce documents

AFFIRMED

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* This disposition is not appropriate for publication & may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a) & Ninth Cir. R. 34-4.

*** Honorable Laughlin E. Waters, Senior United States District Judge for the Central District of California, sitting by designation.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON,	No. 89-16017
Plaintiff-Appellant,	DC# CV-89-0075 REC
v.	
CHRYSLER MOTORS CORPORATION, et al.,	ORDER DENYING PETITION FOR REEHARING**
Defendants-Appellees.	FILED 10-1-1990

Before: TANG and NOONAN, Circuit Judges, and WATERS*

The panel has considered the Petition for Rehearing. The Petition for Rehearing is denied.

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* Honorable Laughlin E. Waters, Senior United States District Judge for the Central District of California, sitting by designation.

** ORDER DENYING PETITION FOR REEHARING as worded in the document.

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HENRY ANDERSON, Plaintiff, V. CHRYSLER MOTORS CORPORATION and STOCKTON DODGE, INC., Defendants.	No. CV-F-89-075 REC DECISION & ORDER RE MOTION FOR PRODUCTION OF CERTIFIED COPIES

On June 5, 1989 the court heard plaintiff's Motion for Production of Certified Copies. Upon due consideration of the written and oral arguments of the parties, the court now enters its order denying the motion as set forth herein.

Plaintiff moves, pursuant to Rule 34 of the Federal Rules of Civil Procedure, to compel defendant Chrysler Motors Corporation "to furnish this Court & the plaintiff with exact, complete, certified copies of the warranty terms & provisions" for the truck he purchased.

He also requests that Chrysler provide him with "certified, exact copies of the extension of warranty terms due to repairs being made on the vehicle, also a copy of the person's authority who is certifying documents being presented to the Court and plaintiff". He claims that he has never been furnished with such warranties.

In addition, plaintiff moves to compel defendant Stockton Dodge, Inc. "to furnish this Court & the plaintiff with exact full size copies of the sales invoice" for the truck "showing both sides of the invoice, copies to be clear & legible." Also he requests that the Court order Stockton to "identify by complete name and address the salesman for the vehicle and defendant to identify by complate name & address & authority, the person who deliberately made the illegible scrawl at the bottom of the invoice; and defendant to furnish complete details of persons, dates etc., of plain-

tiff's cash down payment for the vehicle." He also requests copies of repair invoices, certification of emission testing, the warranty booklet, and details of the repairs including who made them.

The Court finds that plaintiff's motion is untimely made. Plaintiff filed this motion on May 24. 1989, only 2 weeks before the June 5, hearing date. While plaintiff cites to Rules 6 and 7 of the Federal Rules of Civil Procedure for the proposition that only five days prior to the hearing are require, Local Rule 230 provides that motions shall be set for hearing "not less than 28 days after service and filing of the motion, . . ." Therefore, this motion is not properly noticed and will not be entertained at this time. Plaintiff should use the discovery procedure as set forth in Federal Rule of Civil Procedure 34 to request production of documents from other parties to the action,

such as plaintiff seeks.

Also, plaintiff filed two Motions to Strike which are essentially oppositions to defendants' motions. The motions are to strike defendants' Motions to Dismiss. Therefore, the court considers such pleadings nothing more than opposition papers.

ACCORDINGLY, IT IS ORDERED that plaintiff's Motions for Production of Certified Copies and to Strike are denied.

DATED: June 16, 1987.

/s/_____
ROBERT E. COYLE
United States District Judge

Supreme Court, U.S.
FILED
JAN 31 1991
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NO. 90-1113

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY ANDERSON,

Petitioner,

v.

CHRYSLER MOTORS CORPORATION,
STOCKTON DODGE, INCORPORATED,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT CHRYSLER MOTORS CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner HENRY ANDERSON has filed his Petition for Writ of Certiorari in this Court seeking review on certiorari of a ruling by the Ninth Circuit Court of Appeals. The ruling affirms the dismissal of Mr. ANDERSON's claim by the United States District Court for the Eastern District of California, on grounds of lack of subject matter jurisdiction. Respondent CHRYSLER MOTORS CORPORATION ("CHRYSLER") hereby respectfully submits its Brief in Opposition, on grounds that Mr. ANDERSON has not set forth within his Petition an issue amenable to review on certiorari and sufficient to place in issue the ruling of the Ninth Circuit Court of Appeals; in addition, CHRYSLER seeks to point out to the Court certain misstatements set forth in the Petition.

STATEMENT OF THE CASE

Initial Action In State Court

This action arises out of Mr. ANDERSON's purchase of a 1987 Dodge pickup truck from Stockton Dodge on or about April 29, 1987. On

June 17, 1988, Mr. Anderson, in propria persona, filed a Complaint in the Superior Court of California for the County of Calaveras, Action Number 15146.

Thereafter, upon motion of Defendant Stockton Dodge, the Superior Court for the County of Calaveras ordered a change in venue of the action to San Joaquin County. Plaintiff petitioned, by Writ of Mandamus, the Court's Order. The Court of Appeal of the State of California for the Third District subsequently denied this Petition. To date, Plaintiff has failed to pay the necessary transfer fees required to transfer the action to San Joaquin County.

Action in the Federal District Court

On January 19, 1989, Petitioner filed his original Complaint in the United States District Court for the Eastern District of California. Thereafter, on April 13, 1989, Appellant filed his Amended Complaint.

On April 18, 1989, CHRYSLER filed in the District Court its Motion to Dismiss

Plaintiff's Amended Complaint for Lack of Subject Matter Jurisdiction. In this Motion, CHRYSLER contested subject matter jurisdiction on the ground that Plaintiff's Amended Complaint failed to establish subject matter jurisdiction under either the Magnuson-Moss Warranty Act, 15 U.S.C.A. §§2301, et. seq. (West 1982), or under traditional rules of diversity jurisdiction, 28 U.S.C.A. §1332 (West 1966 & Supp. 1990). Additionally, CHRYSLER requested the District Court to abstain from exercising its jurisdiction on the grounds that a virtually identical action was currently pending in the State Court. On May 5, 1989, Appellee Stockton Dodge filed Motions to Dismiss and to Strike Portions of Anderson's Amended Complaint. The Motions of Stockton Dodge were premised on virtually identical grounds as CHRYSLER's Motion to Dismiss, with the exception that Stockton Dodge did not request the District Court to abstain from exercising jurisdiction.

In response to the Motions of CHRYSLER

and Stockton Dodge, Petitioner filed three Motions entitled, to wit:

> Plaintiff's Notice of Motion and Motion to Strike the Absurd Motions of Defendant Stockton Dodge's Incompetent Lawyer, William F. Horsey, dated 6/24/89;
>
> Notice of Motion and Motion to Strike Defendant Chrysler Motors Corporation's Motions to Dismiss, Abstain and For More Definite Statement. Also Rebuttal to Defendant's Motions;
>
> Notice of Motion and Motion to Strike the Defense Motion to Dismiss and the Incompetent Declaration of W. F. Horsey with Memorandum of Points and Authorities and Sworn Affidavit of Henry Anderson.

Additionally, Petitioner filed a Motion entitled "Notice of Motion and Motion for Production of Exact, Complete Certified Copies of the Warranty Provisions and Terms of the Truck." Pursuant to this Motion, Appellant sought to compel production of certified copies of warranty terms. Additionally, Petitioner sought from Stockton Dodge copies of the sale invoice for the subject vehicle, the name, address and identity of a Stockton Dodge salesman, and other documents relative

to the warranty repairs performed on the subject vehicle.

On June 5, 1989, the District Court heard oral argument from each of the parties with respect to the above-referenced Motions. Appellant Henry Anderson appeared in pro per and was afforded the opportunity to present oral argument in opposition to Respondent CHRYSLER and Stockton Dodge's Motions. Additionally, Anderson was afforded an opportunity to orally argue his position with respect to the affirmative motions presented to the Court. Following oral argument, the District Court took all matters under submission and, thereafter, granted the Motions of Respondent CHRYSLER and Stockton Dodge for Dismissal for Lack of Subject Matter Jurisdiction.[1]

The District Court concurrently issued its Decision and Order Denying Plaintiff's Motion for Production of Certified Copies of

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[1] The District Court's Decision Order in this regard was dated June 16, 1989.

Documents. Pursuant to this Order, the Court found that the Plaintiff's Motion was untimely, the Motion having been filed on May 24, 1989, only two weeks before the June 5, 1989 hearing date. In so ruling, the Court relied upon E. Dist. Cal. Rule 230[2], providing that motions shall be set for hearing "not less than 28 days after service and filing of the motion . . ."

Appellate Court
Affirmance of the District Court

Thereafter, Petitioner filed his Appeal in the United States Court of Appeals for the Ninth Circuit, essentially contending that the District Court erred in dismissing Mr. ANDERSON's claim on the grounds of lack of subject matter jurisdiction and in denying Mr. ANDERSON's Motion for Production of Documents. The Appellate Court affirmed the District Court in all respects in its Memorandum Decision filed August, 1990.

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[2] E. Dist. Cal. Rule 230 is alternatively referred to herein as "Local Rule 230" or the "Local Rule."

The Appellate Court determined the matter without oral argument pursuant to Fed. R. Civ. P. 34(a) and Ninth Cir. R. 34-4. The Court's decision was as follows:

> We affirm the district court's decisions. We conclude (1) the district court did not err in dismissing Anderson's claim for lack of subject matter jurisdiction; (2) Anderson was not entitled to an interpreter under 28 U.S.C. § 1827(d)(1); and (3) the district court did not err in denying Anderson's motions to produce documents. AFFIRMED.

ARGUMENT

I.

MR. ANDERSON'S PETITION FAILS TO SET FORTH ANY JUSTICIABLE ISSUE FOR REVIEW ON CERTIORARI

In the first section of Mr. ANDERSON'S Petition, Questions Presented for Review, he sets forth twelve purported issues for review on certiorari. When the issues are read in conjunction with the arguments set forth in the Petition, however, it is apparent that the gravamen of Mr. ANDERSON's complaint is that the District Court, in ruling upon Defendants' Motions to Dismiss and upon Plaintiff's Motion

for Production of Documents, did not consider the facts underlying Plaintiff's claim and did not issue a ruling on the merits.

In ruling upon the Motions to dismiss of both Petitioner CHRYSLER and STOCKTON DODGE, the District Court expressly found that no subject matter jurisdiction existed in the District Court. The Ninth Circuit Court of Appeals affirmed the District Court's ruling in this regard. Nowhere in Mr. ANDERSON'S Petition has the propriety of the District Court's ruling on subject matter jurisdiction been questioned. As Mr. ANDERSON has not presented any question for review in this Court regarding the District Court and Appellate Court treatment of this basic and fundamental ruling, it is respectfully contended that no judiciable issue has been presented.

Mr. ANDERSON'S Petition does appear to present a challenge to Local Rule 230 of the District Court for the Eastern District of California, which rule provides that motions

shall be served and filed not less than 28 days (for personal service) or 31 days (for service by mail) prior to the date of hearing on the motion.[3] The District Court relied upon this Local Rule in denying Plaintiff's Motion to Produce. Mr. ANDERSON apparently contends that the District Court's reliance on the Local Rule violated his due process rights and constituted a departure from the accepted and usual course of judicial proceedings. (Supreme Court Rule 10.1(a).) Mr. ANDERSON apparently petitions this Court to correct the purported departure through exercise of the Court's power of supervisory review. Id. Petitioner argues that the District Court has improperly promulgated time frames for notice of civil law and motion matters. He bases his argument on the fact that Federal Rule of Civil Procedure 6(d) provides for a different time frame for service and filing of notice of motion.

Federal Rule of Civil Procedure 83,

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[3] Local Rule 230(a).

however, empowers a District Court to establish and amend rules governing its practice not inconsistent with the Federal Rules of Civil Procedure. Local Rule 230 is a proper exercise of Fed. R. Civ. P. 83 and not inconsistent with the Federal Rules. Fed. R. Civ. P. 6(d) states in relevant part that:

> A written motion, other than one which may be heard ex parte and notice of the hearing shall be served not later than five days before the time frame specified for the hearing, unless a different period is fixed by these rules or by order of the court. (Emphasis added.)

Clearly, the Federal Rule contemplates and authorizes establishment by the District Court of a different or further rule establishing an earlier time frame for filing and service of the motion.

Moreover, assuming arguendo that the District Court improperly relied upon Local Rule 230 in denying Plaintiff's discovery Motion, that Court's determination of lack of subject matter jurisdiction, affirmed by the Appellate Court, renders the issue moot.

II.

MR. ANDERSON'S PETITION CONTAINS MATTERS IMPROPERLY PLACED BEFORE THE COURT FOR REVIEW

Within Mr. ANDERSON's Petition, he sets forth facts and occurrences pertaining to his underlying claims against Respondents. In particular, Mr. ANDERSON argues the facts and circumstances surrounding the purchase of his vehicle and subsequent problems associated with it. These arguments are irrelevant to the issues for review and find no support in the record.

In addition, the Petition sets forth Mr. ANDERSON's allegations of fraud and collusion on the part of defense counsel and the District Court Judge. In this regard, the Petition contends that the District Court Judge's reliance upon the local rule constituted judicial misconduct; the Petition further contends that defense counsel's citation of the Local Rule to the District Court constituted conspiracy with the District Court Judge to deny rights to the Plaintiff.

With all due respect to Petitioner, CHRYSLER must insist that these allegations constitute improper and inflammatory misstatements of fact and have no basis in the record. It is respectfully submitted that Mr. ANDERSON's assertions and personal attacks have no bearing on any judiciable issue. The inappropriateness of this type of ad hominem argument was noted in Preemption Devices v. Minn. Min. & Mfg. Co. (Fed. Cir. 1984) 732 F.2d 903, 907, wherein the Court commented that:

> It is regrettable that we should have to remind counsel that attacking the judge as lacking skill or understanding or legal competence, as has repeatedly been done in this case, is improper argument and wholly ineffective, if not counter-productive. It has not tendency to prove anything.

Mr. ANDERSON also mistakenly states within his Petition that the District Court entertained no oral argument in connection with Plaintiff's Motion for Production of Certified Documents. In point of fact, however, the District Court did indeed hear

oral argument on Plaintiff's Motions on June 5, 1989, in conjunction with oral argument on the Motions to Dismiss of both Defendants. Thereafter, the District Court issued its Decision and Order Re Motion for Production of Certified Copies, dated June 16, 1989. This Order reflects the presentation of oral arguments of the parties on the matter on the date of the hearing.

Finally, Mr. ANDERSON's Petition contains a one-sentence contention that the District Court improperly failed to apply the provisions of 28 U.S.C.A. § 1827 (West Supp. 1990). The provisions of this statute establish a mechanism whereby litigants who speak a language other than English or suffer from hearing impairment may obtain the services of an interpreter to facilitate their understanding of the court proceedings. The record reveals that Mr. ANDERSON made no motion for the appointment of an interpreter and the District Court made no assessment that an interpreter was required. The Court of

Appeals determined that Mr. ANDERSON was not entitled to an interpreter under 28 U.S.C.A. § 1827(d)(1). Mr. ANDERSON's Petition does not challenge the propriety of the Court of Appeals determination, nor does the Petition offer any argument or authority for his conclusory statement that the District Court action resulted in a denial of rights. Accordingly, it is respectfully submitted that Petitioner's assertion with respect to 28 U.S.C.A. § 1827 also fails to present a proper issue for review in this court on certiorari.

III.

CONCLUSION

A reading of the Petition of Writ for Certiorari reveals that Petitioner has failed to set forth any judiciable issue for review on certiorari. Rather, Mr. ANDERSON's arguments, in the main, challenge the fact that the District Court failed to consider the merits of his underlying claim in dismissing the action for lack of subject matter jurisdiction; similarly, Mr. Anderson

challenges the Appellate Court's non-consideration of the merits in affirming the District Court. Within his Petition, Mr. Anderson has not properly set forth facts or arguments or legal authority sufficient to place in issue the District Court's granting of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction nor the affirmance of this ruling by the Ninth Circuit Court of Appeals. Accordingly, Respondent CHRYSLER respectfully requests that Mr. ANDERSON's Petition for Writ of Certiorari be denied.

Dated: January 28, 1991.

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